IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 19594 of 2004

Between:

K.Kishan Reddy, S/o.Late Malla Reddy,
Ex-14394557, HAV (OPR), R/o.Kothapalli,
Karimnagar.

..... PETITIONER

AND

1 The Union of India,

rep., by its Secretary,

Ministry of Defence, New Delhi.
2 The Addl. Director General of personnel service

4(D) AG's Branch, Army Head Quarters, DHO-PO, New Delhi.
3 The P.C.D.A. (Pensions),

Draupadi Ghat, Allahabad-211014.
4 The Commanding officer,

Artillery Records, Nasik Road Camp-422102.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of writ of Mandamus, declaring the letter No.G-3/53/2715/ 12-03, dt.11-4-2004 of the 3rd Respondent as arbitrary and illegal and consequently set aside the same and direct the Respondents to sanction disability pension to the petitioner forthwith as per the recommendations of the Medical Board held on 31-12-2002 or alternatively direct the 4th Respondent to change the Medical category of the petitioner, shown at S1.No.24, under the caption "Medical Record" in the Discharge book issued to the petitioner and with all other consequential benefits, monetary and otherwise.

Counsel for the Petitioner: Mr. V.JAGAPATHI

Counsel for the Respondents: Mr. A. RAJASHEKAR REDDY (SC FOR CG)

The Court at the admission stage made the following :

The petitioner is an Ex-serviceman. He contends that he was enrolled in the Indian Army as an Operator on 19-12-1985. At the time of his entry into service, he was medically fit. He was sent for training at Artillery Centre, Nasik Road Camp and on successful completion of the training he was posted to Lanchung (Sikkim) in September, 1987. He worked in various stations till March, 2003. As a result of his exposure to bad climatical conditions in various places, he suffered THROMBO PHILIBITIS – RIGHT LEG LOWER LIMB and he was placed in the Lower Medical Category by the Medical Board. He was found medically unfit for further retention in service by the Artillery Records, Nasik Road Camp. As per the direction of the 4th respondent, he appeared before the Medical Board, which was convened on 31-12-2002. He was physically examined by the Medical Board and his disability was assessed at 20% and it was also declared that his disability is attributable to the military service. As per the recommendations of the Medical Board, he was prematurely discharged from the Army services on medical grounds with effect from 31-3-2003. At the time of discharge he was advised by the 4th respondent to submit a claim for disability pension as per the rules in vogue. Accordingly, he submitted a disability pension claim and the same was recommended and forwarded by the Artillery Records, Allahabad to the Pension Sanctioning Authority for sanctioning disability element of pension to him. But, the Pension Sanctioning Authority through the proceedings dated 11-04-2004 intimated the Artillery Records, NRC that his disability pension claim was rejected. He submitted a representation to the 2nd respondent on 01-09-2004 against the rejection order of the Pension Sanctioning Authority dated 11-04-2004. The petitioner further contends that as per para.173 of the Pension Regulations for Army 1961 Part I, he is entitled for disability pension and as the 3rd respondent refused to sanction the disability pension, he approached this Court seeking to declare the order of the 3rd respondent dated 11-04-2004 as arbitrary and illegal and consequently, to direct the respondents to sanction disability pension as per the recommendations of the Medical Board held on 31-12-2002 or alternatively direct the 4th respondent to change his medical category shown at Serial No.4 under the caption ‘Medical Record’ in the discharge book issued to him.

In the impugned order dated 11-04-2004 the 3rd respondent mentioned that the disability suffered by the petitioner is neither attributable nor aggravated by military service. It is Constitutional in nature and not related to the military services and the disability was assessed at less than 20%.

The learned counsel for the petitioner submits that the disability suffered by the petitioner is attributable to the military services. Therefore, as per para 173 of the Regulations of Army 1961 part I, he is entitled for the disability pension.

In the light of the submissions made by the petitioner, the respondents 2 and 3 are directed to examine the representation of the petitioner dated 01-09-2004 in the light of para 173 of the Pension Regulations of Army 1961 Part I and other relevant provisions of law, and pass appropriate orders regarding the claim of the petitioner for medical disability pension within eight weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of.

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(Dr.G.YETHIRAJULU,J)

28th October, 2004.

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To

1 The Secretary,

Union of India,

Ministry of Defence, New Delhi.

2 The Addl. Director General of personnel service

4(D) AG's Branch, Army Head Quarters, DHO-PO, New Delhi.

3 The P.C.D.A. (Pensions),

Draupadi Ghat, Allahabad-211014.

4 The Commanding officer,

Artillery Records, Nasik Road Camp-422102.

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